

UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
LLB AND DIPLOMA IN LAW PROGRAMME
FINAL EXAMINATION PAPER, MAY, 2019

TITLE OF PAPER : LEGAL METHODS
COURSE CODE : IDE LAW102
TIME ALLOCATION : THREE (3) HOURS
INSTRUCTION : **ANSWER QUESTION 1 AND
THREE OTHER QUESTIONS**
TOTAL MARKS : 100

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QUESTION 1 (COMPULSORY)

The case of R v V was decided by the High Court of Eswatini in 1966. This was a period when Eswatini had no constitution. The *ratio decidendi* of the case has been used by our courts in the past years as a precedent with regard to the dissolution of marriages governed by Swazi law and custom. Despite the fact that this judgment was decided a long time ago and has been considered again and again in later cases, the present Court is now called upon to consider it since the Plaintiff has cited it and has made compelling arguments that the Court should adhere to the doctrine of judicial precedent.

You have been requested by the Judge to provide an opinion with regard to what methods exist (if any) that the court may consider regarding the avoidance of the precedent and factors that the court may consider to determine if a precedent is still relevant.

Discuss and advise the Court.

[25 marks]

QUESTION 2

It may be generally said that every court is bound by the decision of any court above it in the judicial hierarchy, but this statement is not entirely accurate. Referring to decided cases discuss this statement and further discuss how the *ratio decidendi* and *obiter dictum* is identified.

[TOTAL MARKS 25]

QUESTION 3

- a) State the hierarchy of the courts of the Kingdom of Eswatini commencing with the highest court. [15 marks]

- b) State the reasons for the importance of the doctrine of judicial precedent.

[10 marks]

[TOTAL MARKS 25]

QUESTION 4

- a) Discuss the position of customary law within the Eswatini legal system stating how the courts are able to recognise a custom

[25 marks]

QUESTION 5

- a) Identify and list three categories of functions that lawyers perform. [3 marks]

- b) State what the principal functions of the following type of lawyers are:

- i) Conveyancer [4 mark]
- ii) Prosecutors [4 marks]
- iii) Notary Public [4 marks]
- iv) Attorney General [4 mark]
- v) What are secondary sources of law? [6 marks]

[TOTAL MARKS 25]

QUESTION 6

Discuss how the Eswatini courts structure became dual and the consequences of such.

[25 marks]